IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1569 of 2003
WITH
CRIMINAL APPEAL No 1570 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK CHANULAL RANA

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeals No. 1569 and 1570 of 2003
MS RUKHSANA M PATHAN for Appellant
THROUGH JAIL for Appellant No.
MR BD DESAI, APP for Respondent No.1 - STATE

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/12/2004

ORAL JUDGEMENT

1. The present appellants have been preferred these appeals against the judgment and order of conviction dated 17.11.2003 passed by the Additional Sessions Judge,

Surat, in Sessions Case No.188 of 2000 for five years rigorous imprisonment for offences punishable under Section 364 of the Indian Penal Code read with Section 135 of the Bombay Police Act and fine of Rs.250-00, in default of payment of fine, simple imprisonment of one month. The present appellants have also been awarded sentences for five years simple imprisonment for the offence punishable under Section 307 read with Section 114/34 of the Indian Penal Code and fine of Rs.250-00, in default of payment of fine, one month simple imprisonment.

2. When the victim - original complainant was present in his house on 05.08.99, between 5.30 p.m. to 5.45 p.m., Ashok Chandulal Rana, present appellant [Criminal Appeal No.1570 of 2003] came with his friends Jayesh, Sunil (absconding accused) and Ashvin, they all invited the complainant - victim to accompany them as they have arranged a party and, therefore, the victim gone along with them. Victim set in autorickshaw in which the accused were sitting. The said autorickshaw was driven out by Sunil (absconding accused). In party, the accused had given alcohol to the victim (complainant) and, thereafter, Ashok Chandulal Rana was shouting to other accused to kill the present complainant victim. All the accused followed the shouts and they stopped rickshaw on katchcha road and, thereafter, Ashvin and Ashok caught hold the complainant and Sunil and Jayesh caused injuries by sword and knife to the complainant. The accused left the victim there on road. Thereafter, some person of another rickshaw took the complainant opposite to Saroli Guest House and on alighting from rickshaw, a complainant - victim had gone to nearby Manavdaya Trust Hospital, village Saroli and there, the F.I.R. was given by the complainant on 06.10.1999. The dying declaration was also recorded on 06.10.1999 in presence of Executive Magistrate, in which also, the names of the accused were given with reason that there was altercation with accused Sunil (absconding accused) before a month. The date, time, names of accused, weapons and the reasons have been narrated in the said dying declaration recorded at 14.20 hours on dated 06.10.1999 before the Executive Magistrate. Upon completion of investigation, the charge-sheet was filed and the Sessions Case was registered against the present appellants before the District Court, Surat. The accused Sunil is absconding even on today. Thus, the present appellants kidnapped the complainant and, thereafter all of them in furtherance of common intention, to kill the victim and assaulted the complainant with sword caused injuries.

2. Learned advocate for the appellants has mainly submitted that there are lot of omissions and contradictions in the depositions of the prosecution witnesses and, therefore, the conviction awarded by the trial Court for the offence punishable under Section 364 of Indian Penal Code for rigorous imprisonment of five years as well as punishable under Section 307 of Indian Penal Code for five years simple imprisonment deserves to be quashed and set aside. It is also submitted by the learned advocate for the appellants that the panch witnesses of the scene of offence, have turned hostile i.e. P.W.5 and P.W.6. Therefore, the scene of offence panchnama is not proved by the prosecution. Similarly, the panch witness of rickshaw i.e. P.W.8 has also turned hostile. The weapon, the cloth of the injured i.e. complainant have not been recovered by the prosecution. The panch witness of panchnama Ex.27 has also turned hostile, who is P.W.7. Thus, neither the scene of offence has proved nor the weapon has recovered nor the cloth of the injured i.e. complainant has been recovered and Dr.More who gave the treatment to the complainant, has not been examined by the prosecution as cumulative effect thereto. The conviction awarded by the trial Court is required to be quashed and set aside. The offences have not been proved beyond reasonable doubt. The learned advocate for the appellants has relied upon the following decisions:-

[i] B. M. Suresh Vs. State of Karnataka, reported in 2001 Cri.L.J. 36;
[ii] Pawan Kumar and others Vs. State of Rajasthan, reported in 1995 Cri.L.J. 3950;
[iii] Rabi Behera Vs. State, reported in 1992 Cri.L.J. 22392;
[iv] State of Karnataka Vs. Harijan Dharma and another, reported in 1992 Cri.L.J. 2840.

3. Learned APP for the respondent - State has vehemently submitted that the complainant is an injured witness. Without contradiction, clear deposition has been given by the complainant i.e. P.W.3 Ketan Dhansukhlal Shah. The injured eye witness has narrated the incident clearly that the present accused had abducted the injured eye witness, in furtherance of their commission intention to kill the complainant. The complainant, thereafter, caused injuries by sword and knife. Thus all the accused came together, with a common intention to kill the complainant, abducted him, under a pretext of party and they assault with sword and knife. This has been narrated explicitly clear by injured eye

witness at Ex.17, immediately his F.I.R. and dying declaration were recorded on the very next day immediately after performance of an operation upon complainant. Nonetheless as the witness has survived in hospital, dying declaration recorded under Section 32 of the Indian Evidence Act can be used under Section 158 of the Indian Evidence Act to corroborate the facts. In the said statement, categorically the incident has been narrated, the names of the accused have been given, the weapon has been narrated, the manner in which the assault caused has also been narrated. It is further contended by the learned APP for the respondent State that in the deposition of P.W.9 - Dr.Arvind Rambhai Patel, Ex.30, it is stated that several injuries were caused to the complainant. Injuries were sufficient to cause the death of the complainant, if the proper treatment could not have been given to the complainant, the complainant would have died and injury No.1 was fatal. It is also narrated by Dr.Arvind Rambhai Patel that the injured has been given treatment in his hospital which has been recorded in the medical certificate, Ex.31 in which also it was recorded by Dr.Arvind Rambhai Patel that the assault was caused by 4-5 persons with sword and knife. Thus Ex.31 and the deposition of P.W.9 Dr.Arvind Rambhai Patel, Ex.30 fully corroborates the F.I.R. and the version of injured eye witness i.e. complainant - P.W.3 Ex.17. It is submitted by the learned APP for the respondent State that when there is occular evidence, which is trustworthy and supported by contemporary record of hospital and dying declaration recorded by the Executive Magistrate, there is no reason for any Court to disbelieve the injured eye witness who knows the present appellants and their names were also given by him in F.I.R. and, therefore, the trial Court has rightly relied upon the depositions of the prosecution witnesses especially injured eye witness and came to, a correct conclusion, that the offences have been proved against the present appellants. Looking to the evidence on record and cumulative effect, the depositions of the prosecution witnesses and the documents on record, the second view is not possible and, therefore, the view taken by the trial Court is not required to be interfered by this Court and the appeals may kindly be dismissed.

4. I have heard the learned counsels for both the sides at length.

5. I have perused the depositions of the prosecution witnesses and the documents on record. On the basis of deposition of the prosecution witnesses and the documents, it is established that the complaint Ex.18

came to be filed immediately. The incident has taken place on 05.08.99 at 18.00 hours. Thereafter, the injured eye witness was admitted, to hospital and the operation was performed on him. On the next day, after he getting conscious, the F.I.R. was registered wherein a detail of incident has been narrated, the names of the accused have been mentioned along with the weapons, one of the appellant namely Ashok Chandulal Rana, who came along with other co-accused, who abducted the injured eye witness i.e. complainant and, thereafter, the injuries caused upon him, Ashok Chandulal Rana caught hold complainant and other co-accused namely Sunil [absconding accused] caused injuries by sword and another co-accused Jayesh caused injuries by knife to the complainant. Thereafter, the complainant was hospitalized in the hospital, the dying declaration was also recorded in presence of the Executive Magistrate wherein also the names of all four accused were given and the incident has been narrated in the said dying declaration, recorded on 06.08.99, as the injured eye witness was survived it has its own corroborative value, under Section 158 of the Indian Evidence Act.

6. Looking to the deposition of prosecution witness No.3 Ketan Dhansukhlal Shah, it has been deposed by him that the accused came together narrated falsely that there is a party and the complainant should accompany them. Thereafter, all the accused jointly took the complainant in a rickshaw and, thereafter, he was given sword and knife blows and two accused namely Ashok and Ashvin have caught hold the said victim whereas the Sunil and Jayesh have given blows of sword as well as knife. The accused Sunil is absconding. The injuries narrated by the said injured eye witness have been corroborated by the deposition of P.W.9 - Dr.Arvind Ramabhai Patel, Ex.30. P.W.9 - Dr.Arvind Ramabhai Patel, Ex.30 has deposed that from 05.08.99 to 23.08.99, the said injured witness was admitted as an indoor patient. The injury certificate is at Ex.31. There were several incised wound upon complainant over lower abdomen at scull, shoulder, at four arms, at wrist etc. There is further corroboration to the injured eye witness by the medical certificate Ex.31 which reveals the case history given by the patient and recorded immediately after the incident has taken place. It has been narrated by Dr.Arvind Rambhai Patel that the patient has given a history that he was assaulted by 4-5 persons with sword and knife near village Saroli. Of course, the detail, which has been given in the complaint has not been reflected in the case history, but the fact remains that the case history is always in abridge form, but whatever narrated in the case

history is not in contradiction with, what is stated in the complaint and in contradiction with deposition of the injured eye witness. On the contrary it provides corroboration to the deposition of the injured eye witness by Ex.19. It is It is also stated that all the four accused have, thereafter, assaulted upon him and, with the sharp cutting instrument, the injuries were caused at head, abdomen, hands and legs. Thereafter, he was left there and complaint was brought by one rickshawala at hospital. Dying declaration was also recorded by Executive Magistrate. As per the provisions of Indian Evidence Act under Section 158 whatever statement which is relevant under Sections 32 and 33 can be used to contradict or corroborate. The said statement can be used so as to impeach or confirm the deposition and say of the said witness. Looking to Ex.19 on record, it provides corroboration to the complaint as well as deposition of the complainant, the trial Court has rightly placed reliance upon the deposition of injured eye witness, as the said witness is trustworthy, who has narrated assault accurately without contradiction. His deposition is natural and corroborated by other documents on record like Ex.18, 19 and Ex.31.

7. It is also submitted by the learned advocate for appellants that the scene of offence panchnama is not proved, but this submission is not correct. Looking to the complaint, the deposition of injured eye witness and the panchnama at Ex.24, of scene of offence. It is a consistent version of complainant that assault was caused on "Katchcha road", coming from village Kumbharia and going towards village Parvat. The rickshaw was stopped deliberately and after, alighting from rickshaw the accused assaulted. The complaint dated 06.08.99 was filed in the hospital wherein it is stated that the accused have taken the present complainant at village Saroli on one unpaired road [katchcha road], where the whole incident has been taken placed. The same version is deposed by P.W.3 - Ketan Dhansukhlal Shah, Ex.17 in his deposition that the incident has been taken place on road which is coming from village Kumbharia and going towards village Parvat. The panchnama of scene of offence, which has been proved upon the deposition of the police witness i.e. P.W.10 Chandrashekhar Manik Mudalia, Ex.34. Even hostile witness of the said panchnama have clearly stated in their deposition at Ex.23 that the panchnama was signed by said panch witnesses. Similarly another panch witness has also stated that the signature in the panchnama was his own signature. But both the panchas have stated that they are not knowing, what is stated in the panchnama once signature is accepted by the panch witnesses, couple with a fact that there is a clear

deposition of police witnesses. I see no reason to say that panchnama of the scene of offence is not proved. On the contrary, in view of the aforesaid circumstances, namely acceptance of signature of panchas in panchnama by both the witnesses and looking to the clear deposition of P.W.10, Ex.34, the panchnama of scene of offence is proved. From the said panchnama Ex.24 of the scene of offence, it is explicitly clear that the whole incident has taken place on kutchcha road which is coming from village Kumbharia and going towards village Parvat, even the width of the road is given in the panchnama. It is also stated that as there was a season of monsoon, the water of rain had come on the said road and because of the fresh rain water, the blood stain was not found. The said panchnama was drawn on 07.08.99 between 15.00 to 15.45 hours. It is submitted by the learned advocate for appellants that if the complainant has fallen on the road the cloth of applicant would have mud on it and if there is no rain water there must be blood stains on the road but neither is present and, therefore, the scene of offence has not been correctly narrated by the complainant. This argument of the learned advocate for appellant is not accepted by this Court for the reasons that the scene of offence was shown by the accused during the period of remand. As per the deposition of P.W.10, Ex.34, that the incident has been taken place in earlier point of time whereas the scene of offence was shown by the accused during the period of remand at slightly later in point of time, in between, there was a rain also and, therefore, blood stain could not be found from the scene of offence. So far as the blood stain cloths of the injured eye witness are concerned, it has been narrated in the deposition of P.W.10 at Ex.34 that because of immediate operation, which was carried out at the hospital, upon the complainant the cloths of complainant were changed by doctor and nurses or by Staff of the hospital. The investigating officer did ask to doctor of Manavdaya Hospital at village Saroli and they stated that they have misplaced the cloth of injured eye witness, thus enough care has been taken by investigating officer to find out the said cloths of the injured witness, but due to emergency operation which was carried out by doctor, they changed the cloths of the injured eye witness and the officer of the hospital could not find out the said cloths. There is no negligence in the investigation. The mistake of doctor or the nurse of the hospital, cannot give any advantage to the present appellants, especially when the injured eye witness was survived and has given clear and trustworthy deposition. He has given the names of the accused and has narrated assault by weapon and how the injuries have been caused

by sword and knife at abdomen, scull, hands, legs etc.

8. The deposition of P.W.9 Dr.Arvind Rambhai Patel, Ex.30 has clearly stated that the complainant had come to the hospital and one rickshaw driver had brought the complainant to the hospital. He has also narrated several injuries in his deposition. There are nine injuries caused to the injured eye witness. Immediate operation was necessary and, therefore, it was performed at the hospital on the very same day i.e. on 05.08.99. The said complainant was admitted as an indoor patient from 05.08.99 to 23.08.99. He has also narrated that injury No.1 can be caused by weapon gupti and remaining injuries could have been caused by knife as well as sword and if the patient could not have been treated immediately, the nature of injuries are such that it would have resulted death of the complainant. It is also stated by doctor that he had asked the patient (complainant) at midnight as to how the incident has taken placed and the case history also reveals the fact that in such a situation also, he had narrated the incident so far as possible giving particulars. Whatever narration given in the case history is not in contradiction with his complaint before police or deposition before the Court. The medical certificate Ex.31 having case history, was signed by the said witness namely Dr.Arvind Rambhai Patel. The said certificate is contemporary record which reveals 4-5 persons assaulted upon the patient with sword and knife. The patient himself came to hospital and was admitted in hospital. Injuries were also referred in the said certificate. Thus the deposition of Dr. Arvind Rambhai Patel at Ex.30 and certificate Ex.31 are corroborative to the fact, as stated by the injured witness in his complaint before the police and the deposition before the Court. Though panchas of scene of offence have turned hostile, they have admitted their signature on panchnama. The deposition of P.W.10 at Ex.34 has clearly narrated that the F.I.R. was registered by the officer of the police. Thereafter, the investigation was done by the said witness. The statement of the witnesses were recorded by the said witness. The panchnama of scene of offence was also drawn by him. The said panchnama of the scene of offence was shown by accused Ashok (appellant in Criminal Appeal No.1569 of 2003), when the accused Ashok was taken on remand. He has also stated in detail the method and manner in which the investigation is carried out.

9. In view of the aforesaid facts and reasons, the offence is proved against the present appellants. Thus in view of Section 362, the present complainant was

abducted by the accused by deceitful means i.e. under pretext of attending the party and upon abduction of the said complainant all the accused participated actively in causing injuries to the complainant by sword as well as knife and by caught holding the complainant, and thus committed an offence under Section 365 and, therefore, the trial Court has been awarded sentence for five years rigorous imprisonment for offence punishable under Section 365 of the Indian Penal Code and five years simple imprisonment for offence punishable under Section 307 of Indian Penal Code, so as to run concurrently sentences awarded by the trial Court. I see no reason from deviation from the said conclusion which has been arrived at by the trial Court. All the accused came together, abducted the complainant then assaulted upon the complainant and some of the accused caught hold the complainant, the blows were given by knife and sword. The injured eye witness has given F.I.R. from hospital where he was operated, and as far as possible it is narrated in detail and also has given clear deposition before the Court, which was corroborated by the other prosecution witnesses and, therefore, it is not possible for this Court to come to any other conclusion than what is arrived at by the trial Court. The offence against the present appellants are proved beyond reasonable doubt. The appellants have committed offences punishable under Sections 364 and 307 read with Sections 114/34 of the Indian Penal Code. The conviction awarded by the trial Court is true and correct and in consonance with the facts established. Looking to the manner and method in which the offences have been committed, the quantum of punishment awarded by the trial Court is in consonance with the guilt established against the present appellants. The quantum of punishment is also justified and is not unreasonably excessive. The offences committed by the appellants are grave in nature and, therefore, the sentences awarded by the trial Court is absolutely adequate. Hence, there is no substance in these appeals and the same are dismissed.

[D. N. PATEL,J.]

(vijay)